

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA (JOHNSTOWN)

DEBRA HEVERLY CAMPBELL, and POHAKU)	Civil Action No. 3:16-cv-118-KRG
FUNDING AND INVESTMENT))
CORPORATION, in its capacity as Trustee for the))
2895-201 KALAKAUA LAND TRUST and))
POHAIKEALOHA TRUST, DEBRA HEVERLY))
CAMPBELL AS PRESIDENT OF POHAKU)	The Honorable Kim R. Gibson
FUNDING AND INVESTMENT))
CORPORATION, and DEBRA HEVERLY)	Electronically Filed
CAMPBELL AND JADE MAKANA HEVERLY-))
CAMPBELL AS BENEFICIARIES OF))
POHAIKEALOHA TRUST,))
))
Plaintiffs,))
))
v.))
))
M&T BANK, COLONY SURF LTD., DAVID))
SPRIEGEL, GERALYN BONILLA, PERI))
SARAC-FLIMAN, WILLIAM E. DENISON, R.))
STEVENS GILLEY, TERRY MULLIN, MURIEL))
PAYNE,))

Defendants.

**DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED
COMPLAINT PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(2),
12(b)(3), 12(b)(5), and 12(b)(6)**

AND NOW come Defendants, Colony Surf, Ltd. ("Defendant Colony Surf"), William E. Denison ("Defendant Denison"), and R. Stevens Gilley ("Defendant Gilley"), collectively referred to as "Colony Surf Defendants"¹, by and through their undersigned attorneys, Gordon & Rees LLP, and file the instant Motion to Dismiss the First Amended Complaint of Debra Heverly Campbell, and Pohaku Funding and Investment Corporation, in its capacity as trustee for the 2895-201 Kalakaua Land Trust and Pohaikealoha Trust, Debra Heverly Campbell as president of

¹Defendant Terry Mullin ("Defendant Mullin") has not been served such that no response to Plaintiffs' First Amended Complaint is due on his behalf. The Colony Surf Defendants reserve the right to join Defendant Mullin in the instant Motion to Dismiss, and in doing so, do not waive other grounds for dismissal Defendant Mullin may have, including, but not limited to, insufficient service of process.

Pohaku Funding and Investment Corporation, and Debra Heverly Campbell and Jade Makana Heverly-Campbell as beneficiaries of Pohaikealoha Trust (hereinafter collectively referred to as “Plaintiffs”) as set forth herein.

Pursuant to Federal Rule of Civil Procedure 12(b)(5), Defendant Colony Surf files its Motion to Dismiss seeking to dismiss Plaintiffs’ First Amended Complaint on the basis that it has been improperly served.

The Colony Surf Defendants² seek to dismiss Plaintiffs’ First Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6).

The reasons supporting this Motion are set forth in more detail in the accompanying Memorandum of Law filed contemporaneously herewith.

WHEREFORE, the Colony Surf Defendants respectfully request this Honorable Court dismiss Plaintiffs’ First Amended Complaint with prejudice.

Respectfully submitted,

GORDON & REES LLP

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Dated: June 20, 2017

² Should the Court determine that Defendant Colony Surf was properly served, Defendant Colony Surf joins in the Colony Surf Defendants’ Motion to Dismiss Plaintiffs’ First Amended Complaint on the bases of personal jurisdiction, improper venue, and failure to state a claim on which relief may be granted pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6) respectively.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of June 2017, a true and correct copy of **Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint** was served via electronic means on all counsel and parties of record:

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